

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OPPENHEIMER & CO. INC.,

Plaintiff,

-v-

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 02 MAR 2010

No. 08 Civ. 3697 (LTS)(FM)

METAL MANAGEMENT, INC.,

Defendant.

ORDER

On June 11, 2009, Defendant Metal Management, Inc. (“Defendant” or “Metal”) moved to amend its answer to add certain defenses and counterclaims. (Docket entry no. 28.) On July 31, 2009, Magistrate Judge Frank Maas denied the motion (“July 31 Order”). (Docket entry no. 43.) Defendant filed objections to the July 31 Order (“Objection”) on August 18, 2009. (Docket entry no. 48.) Plaintiff Oppenheimer & Co. Inc. (“Plaintiff” or “Oppenheimer”) filed a Response to Defendant’s Objection on August 28, 2009. (Docket entry no. 50.) The Court has reviewed thoroughly the July 31 Order, Defendant’s Objection, and Plaintiff’s Response.

DISCUSSION

The Court reviews the Magistrate Judge’s July 31 Order denying Defendant’s motion to amend its answer for clear error. See, e.g., Sokol Holdings, Inc. v. BMB Munai, Inc., No. 05 Civ. 3749 (KMW) (DCF), 2009 WL 3467756, at *3-4 (S.D.N.Y. Oct. 28, 2009) (noting that “[t]he weight of opinion appears to favor treating such rulings as nondispositive, requiring a ‘clearly erroneous’ standard of review,” especially where the ruling is based on procedural

grounds); Urban Box Office Network, Inc. v. Interfase Managers, L.P., No. 01 Civ. 8854 (LTS) (THK), 2005 WL 1639333, at *1 (S.D.N.Y. July 12, 2005). Judge Maas denied Defendant's motion on the ground that Defendant had failed to show "good cause," as required by Rule 16(b)(4) of the Federal Rules of Civil Procedures, for its failure to meet the deadline established by the applicable scheduling order. (July 31 Order at 6-8.) Judge Maas recognized that Plaintiff may suffer no prejudice from the proposed amendment (*id.* at 7), and that the result of the July 31 Order "may seem harsh" (*id.* at 8), but rejected Defendant's proffered excuse for its delay in seeking the amendment (*id.* at 6-7). Defendant's Objection reiterates its argument on the underlying motion, namely that the untimeliness was justified by discovery delays and that Plaintiff will not be prejudiced by the proposed amendments. The Court finds Judge Maas's reasoning on these points to be persuasive, and certainly not clearly erroneous, and therefore declines to disturb the July 31 Order. Accordingly, Defendant's Objection is overruled and Judge Maas's July 31 Order stands. This Order resolves docket entry no. 48.

SO ORDERED.

Dated: New York, New York
March 2, 2010



LAURA TAYLOR SWAIN
United States District Judge